

EXHIBIT 26

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

* * * * *

BLACKJEWEL, LLC, et. al.

Debtors,

vs.

Case No. 19-30289

United Bank,

Defendant.

* * * * *

Deposition of Matthew Bond taken by the
Debtors under the West Virginia Rules of Civil
Procedure in the above-entitled action, pursuant to
notice, before Angela L. Curtis, a Certified Court
Reporter, at Steptoe & Johnson, 700 Virginia Street,
East, Charleston, West Virginia, on the 23rd day of
September 2021.

REALTIME REPORTERS, LLC
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BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 several years, it's July 1st, 2019.

2 A. It's burned into my head, but I want to make
3 sure.

4 Q. Okay. When you say the early morning, do you
5 have an understanding of was it -- it was technically
6 July 1st, but do you understand that to be essentially
7 very early, before business hours on July 1st or do you
8 have, does United Bank have such an understanding?

9 A. United Bank's understanding that I believe
10 there were multiple entities that were filing and so
11 the commencement of those filings occurred pre business
12 hours on the 1st.

13 Q. Okay. All right.

14 A. I don't know when the final filings occurred.

15 Q. Okay. And do you understand July 1st, 2019 to
16 have been a Monday?

17 A. I do, yes, sir.

18 Q. Okay, so when I was asking you questions about
19 United Bank's understanding of the proposed DIP in
20 Blackjewel's bankruptcy cases, I think you indicated
21 that United Bank became aware of it on Sunday; is that
22 correct?

23 A. To the best of my recollection we became aware
24 of it on Sunday.

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 Q. Okay and that would have been June 30th then?

2 A. Yes.

3 Q. Okay. All right.

4 DEPOSITION EXHIBIT D

5 (E-mail Chain was marked
6 for identification purposes as Deposition
7 Exhibit D.)

8 Q. The court reporter's handed you what we've
9 marked as plaintiff's Exhibit D. I'm going to ask you
10 a few questions about that. Just let me know when
11 you're ready.

12 I will tell you now as well that I'm not going to,
13 it's not my intention right now initially to ask you a
14 lot of questions about the lengthy attachment.

15 A. Okay. When you refer to the attachment, are
16 you referring to the debtor in possession note that's
17 attached in the filing or the attachment to the e-mail?

18 Q. The attachment, all of the attachments to the
19 e-mail we marked as plaintiff's Exhibit D is what I was
20 referring to.

21 A. Okay.

22 Q. Okay. Well, I'll tell you this: Let me just
23 start asking you questions and if you need more time to
24 review you'll tell me and I'll give it to you.

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 Q. Okay. You had, you personally had
2 conversations with Ms. Simpkins?

3 A. Yes, I personally had conversations. I can't
4 say that that was -- I think she looked into it and
5 that's what occurred and there may have been others
6 that had conversations as well.

7 Q. Okay.

8 A. But that was the conclusion that was reached.

9 Q. All right. Do you recall when those
10 conversations occurred?

11 A. It would have been immediately following all
12 of this. I mean, so probably over the weekend or
13 within the first couple days of the court or the
14 bankruptcy proceedings.

15 Q. Okay. All right. When did United Bank first
16 become aware that there was a possibility of a
17 Blackjewel bankruptcy filing?

18 A. Late in the afternoon on the 28th.

19 Q. Okay.

20 A. When I say late, I believe 3:00 o'clock or
21 later.

22 Q. All right. And how did United Bank become
23 aware of that possibility?

24 A. Mark Weintraub, who was counsel for

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 Riverstone, reached out to D.F. Mock and indicated that
2 there was a bankruptcy imminent and that Mr. Hoops had
3 resigned his position as CEO of Blackjewel.

4 Q. Is what you just relayed, is that based on
5 your personal knowledge?

6 A. That is based upon conversation that I had
7 with D.F. Mock and then a subsequent conversation that
8 I had with Mark Weintraub.

9 Q. Okay, so Mr. Weintraub's conversation with
10 Mr. Mock took place on the afternoon of June 28th we
11 said?

12 A. Yes, sir.

13 Q. When did your subsequent conversation with
14 Mr. Weintraub take place?

15 A. Within an hour.

16 Q. Okay.

17 A. Because I basically spoke to D.F. D.F. asked
18 that I call Mr. Weintraub to get an understanding. Had
19 a brief conversation to the same effect of what had
20 been relayed to D.F.

21 Q. So Mr. Weintraub told you the same things?

22 A. Yes, sir.

23 Q. And those things were that a bankruptcy was
24 imminent and that Mr. Hoops had resigned?

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 Mark Weintraub to Mr. Mock and to you; correct?

2 A. I believe my call was back to Mr. Weintraub,
3 but yes.

4 Q. Okay. Fair. I appreciate that and then you
5 indicated there was, following your call with
6 Mr. Weintraub, there was a meeting between you,
7 Mr. Mills, Mr. Mock and Dave Smith that lasted
8 approximately 20 to 30 minutes to the best of your
9 recollection?

10 A. Yes, sir.

11 Q. Okay. What was discussed at that meeting?

12 A. Again, our focus was very much on the risk of
13 an overdraft if a bankruptcy filing occurred, so we
14 discussed how we thought we could prevent that to
15 occur.

16 Q. Okay and how did you believe you could prevent
17 that from occurring?

18 A. We believed that we had the basis to place
19 post no debits on deposit accounts of Blackjewel and
20 other Hoops entities.

21 Q. In lay terms, is post no debits freezing the
22 accounts so no obligations can post to it?

23 A. Not quite. So post no debit, really that
24 creates a decisioning process for us, a manual

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 decisioning process. So when you freeze an account, no
2 money can ever go out. When a post no debit, that
3 limits the ability of others, the ACH money out, to
4 push money out and then a decision any presented items.

5 Q. Got it. To make sure I understood that
6 correctly, it doesn't freeze -- post no debits doesn't
7 freeze the account, but it makes sure no money can
8 leave the account without United Bank manually allowing
9 it?

10 A. That's correct.

11 Q. Okay. All right. So on the afternoon of June
12 28 you said you believed you could place post no debit
13 status. Can you tell me the accounts again?
14 Blackjewel and what other ones?

15 A. I can't list out all the accounts, but I
16 believe there was a Clearwater deposit account. There
17 were other Jeff Hoops related entity accounts. I can't
18 provide a complete list.

19 Q. Okay, but United Bank placed numerous accounts
20 in post no debit status on the afternoon of June 28th
21 that included Blackjewel accounts, Clearwater accounts
22 and other accounts?

23 A. Yes, sir.

24 Q. Who would know what the other accounts were?

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 A. Dave Mills would likely know. Again, by
2 recollection I'm not sure he can recite off every
3 account, but.

4 Q. Okay. Just for clarity of the record, then
5 United Bank did, in fact, place those accounts in post
6 no debit status?

7 A. That is correct.

8 Q. Okay. As the result of that meeting on June
9 28, did United Bank take any other action?

10 A. No.

11 Q. Okay, so it was putting the accounts in post
12 no debit status and that was it?

13 A. That's correct. We may have, and when I say
14 there may have been an ACH limit reduction, so but that
15 goes with the sort of hand and glove with the post no
16 debit.

17 Q. Explain the ACH limit reduction to me.

18 A. So everybody has the -- has limits on what
19 they can ACH out and so if, for example, and this is
20 purely hypothetical, if you're ACH limit were \$100,000
21 a day or something like that, then you could generate
22 ACHs up to \$100,000 that day. What we did is we
23 dropped that limit down to I believe it was a nominal
24 number, maybe a dollar or something, again, to prevent

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 conversation.

2 Q. Did he indicate that operations in the west
3 would cease if the fuel supplier was not paid?

4 A. I believe he did indicate that they were low
5 on fuel.

6 Q. Okay. To your, to United Bank's knowledge,
7 how long was that conversation between Mr. Hoops and
8 Mr. Mills on June 28, 2019?

9 A. Very brief. Again, less than five minutes.

10 Q. Okay. Did United Bank take any action as a
11 result of that call?

12 A. Yes, sir.

13 Q. What action did United Bank take?

14 A. So that's when we discovered the payroll
15 issue.

16 Q. Does that mean before that time United Bank
17 believed the ACH transfer had been initiated?

18 A. Yes. The assigned officers believed that had
19 been -- that had occurred.

20 Q. Okay and following Mr. Hoops's call to
21 Mr. Mills on the afternoon of June 28, other officers
22 at United Bank discovered that the payroll ACH had, in
23 fact, not gone out?

24 A. That's correct. And I believe those officers,

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 Dave and Nicole identified that as well.

2 Q. Okay. Mr. Mills and Ms. Simpkins became aware
3 of it on that afternoon?

4 A. That's correct.

5 Q. All right, so what happened next?

6 A. We -- we tried to get hold of counsel
7 immediately and we engaged, or not engaged, but we were
8 able to connect with Mr. Bunn and we tried to determine
9 how we could get the -- get the payroll processed.

10 Q. Okay. And was it processed?

11 A. It was -- we were not able to process it via
12 ACH because cutoffs had past and at that point we could
13 not sent an ACH or ACH files out for that payroll.

14 Q. Okay.

15 A. So and, again, this was going long into that
16 evening, we were trying to identify ways to get the
17 payroll taken care of and I believe Mr. Bunn was having
18 conversations with Blackjewel's counsel about this and
19 the idea turned to cashier's checks.

20 Q. Okay. And I'm going to tell you my
21 understanding and you tell me if it's consistent with
22 United Bank's and yours as its representative that
23 cashier's checks were collected and cut in the net
24 amount of the pay that would have been due to the

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 employees? Let me stop there. Is that consistent with
2 United Bank's understanding?

3 A. United Bank's understanding is that the
4 payroll, that the cashier's checks were gathered. We
5 were able to identify them. Initially we didn't think
6 we had enough cashier's checks. Over the course of the
7 evening we were able to identify enough cashier's
8 checks and cashier's checks were cut based upon the ACH
9 file that had been submitted.

10 Q. Yes. And I was -- I was maybe trying to be
11 too precise. When they were cut on the basis of that
12 ACH file, the amount of the check for an employee would
13 have corresponded to the amount of that employee's net
14 pay, the amount of the ACH transfer the employee would
15 have received?

16 A. The ACH transfer they would have received.

17 Q. Okay. And all those cashier's checks were
18 cut?

19 A. That's correct.

20 Q. How were they delivered to Blackjewel?

21 A. They were to a pilot that I -- a pilot that we
22 were instructed to deliver them to by Jeff Hoops or
23 Mr. Hoops.

24 Q. All right and Mr. Hoops flew them out to

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 Wyoming. Is that United Bank's understanding?

2 A. That's our understanding, yes.

3 Q. Okay, so back to the conversation on between
4 Mr. Hoops and Mr. Mills on June 28 when you came out of
5 your United Bank meeting. To United Bank's knowledge,
6 did Mr. Mills ask Mr. Hoops if he had resigned?

7 A. I believe that he did, yes, sir.

8 Q. What was the response to United Bank's
9 knowledge?

10 A. I believe that he said that he had not
11 resigned.

12 Q. Okay. All right. Did Mr. Mills ask him if a
13 bankruptcy filing was imminent?

14 A. I do not recall.

15 Q. Okay. I'd have to ask Mr. Mills?

16 A. Yeah.

17 Q. Okay. Did Mr. Mills indicate to Mr. Hoops
18 that the accounts had been placed in post no debit
19 status?

20 A. Yes, sir, he had.

21 Q. Okay. To United Bank's knowledge did he list
22 the accounts then?

23 A. Not to my knowledge. Or not to the bank's
24 knowledge.

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 Q. Okay. My understanding, and I want you to
2 tell me if it's consistent with yours for United Bank,
3 is that those cashier's checks were cut sometime on the
4 following Saturday, June 29; is that right?

5 A. Yes, sir.

6 Q. Okay. Did anything else happen at United Bank
7 with respect to Blackjewel or Clearwater accounts on
8 Saturday January 29?

9 A. No, not to my knowledge.

10 MR. RAUPP: Scott, you said January. You
11 mean June.

12 Q. June 29.

13 A. I didn't catch that.

14 MR. RAUPP: I didn't mean to interrupt.

15 MR. KANE: No, I'm glad you did.

16 Q. June 29?

17 A. That is correct.

18 Q. Okay, so to United Bank's knowledge, other
19 than those checks going out and the accounts having
20 been placed in the post no debit status, nothing else
21 had happened then?

22 A. That's correct.

23 Q. Okay. Do you and United Bank know, were there
24 intended debit transactions hitting the account those

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 A. I would agree with that.

2 Q. Okay, so without asking you to indicate that
3 based on what you've already testified, that would
4 indicate that Mr. Bunn's e-mail reflected in
5 plaintiff's Exhibit D, if what we just said about
6 Greenwich Mean Time was accurate, may have been later
7 on July 1st than we talked about before.

8 A. That would make sense.

9 Q. Back to the questions about the phone call
10 that you mentioned with Blackjewel's counsel around
11 8:30 am on July 1st.

12 A. Yes.

13 Q. Who participated for that call, in that call,
14 for United Bank?

15 A. For United Bank, I believe it was my self,
16 D.F. Mock and Julie Gurtis.

17 Q. Who is Julie Gurtis?

18 A. Julie Gurtis is our chief commercial banking
19 officer.

20 Q. Okay. How do you spell her name?

21 A. G-U-R-T-I-S, Gurtis and then Julie, J-U-L-I-E.

22 Q. Okay. All right, so for United Bank, you,
23 Mr. Mock and Ms. Gurtis. Who participated for
24 Blackjewel?

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 A. Jeff Hoops. I believe there was a
2 representative of Lime Rock who was a board member of
3 Blackjewel. Counsel for Blackjewel was Mr. Lerner. I
4 don't know if there were others, but those are the ones
5 that I definitely remember.

6 Q. Okay and other than the people you just listed
7 for United Bank, and I'll say the debtors, did anyone
8 else participate in that call?

9 A. Our attorney, Mr. Bunn, participated in that
10 call.

11 Q. Okay. And what was the purpose of that call?

12 A. The purpose of that call was to express our
13 concerns with the proposed DIP and the structure of
14 that and how we believed there was a path forward for
15 it.

16 Q. Okay. And what were United Bank's concerns
17 regarding the proposed structure of the DIP?

18 A. So there were several concerns. It really
19 centered on two different things. The primary was that
20 the funds used for the DIP were contemplated either as
21 borrowed moneys from United Bank on existing credit
22 facilities or collateral from United Bank accounts that
23 were held as collateral for other loans. Number one.

24 Number two, we were concerned that the cash

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 that United Bank had already indicated that it would
2 not allow a Clearwater DIP loan?

3 MS. BUNN: Objection in so far as it
4 calls for privileged information and for speculation.
5 He can't answer as to privileged information.

6 MR. KANE: I'm not asking him for
7 privileged information. I'm asking him for United
8 Bank's knowledge.

9 A. You're going have to ask that one again.

10 Q. You said, well, you indicated your perspective
11 that United Bank's intent was the notice of exclusive
12 control meant that there could be no Clearwater funded
13 DIP; right?

14 A. That's correct.

15 Q. Okay and that notice of exclusive control was
16 provided to Clearwater, I acknowledge your earlier
17 testimony about whether it was early or not, but as
18 reflected by plaintiff's Exhibit E at 4:24 a.m.;
19 correct?

20 A. Correct.

21 Q. And my question was: As reflected in
22 plaintiff's Exhibit D, Mr. Bunn was providing comments
23 about a proposed Clearwater DIP at least an hour and
24 maybe five or six hours after that; right?

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 A. Yes, sir.

2 Q. Why was he doing that if United Bank wasn't
3 going to allow the Clearwater DIP?

4 A. Because we were trying to find a path to cure
5 the defaults that were noted in the notice of exclusive
6 control and thus, if we had been able to come up with a
7 resolution for that, we would have rescinded our notice
8 for exclusive control.

9 Q. Okay.

10 A. And we made that through various offers.

11 Q. Who made that through various offers?

12 A. The bank via the phone call at 8:30 and also
13 additionally I believe in conversations with counsel.

14 Q. Okay. But as to my specific question about --
15 I just want to make sure it's clear for the record.

16 A. Yeah.

17 Q. That your view is the notice of exclusive
18 control informed the debtors and Clearwater that there
19 could be no Clearwater DIP?

20 A. Yes.

21 Q. Okay. And you said that Clearwater could have
22 funded the DIP if it would have paid off the Clearwater
23 loan; correct?

24 A. It could have funded the DIP if it would have

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 cured the defaults.

2 Q. Okay.

3 A. And there are multiple case you can cure
4 defaults.

5 Q. Okay and you referenced paying off the
6 Clearwater line of credit; correct?

7 A. That's correct.

8 Q. All right. What is the -- take a look at the
9 notice of exclusive control.

10 A. Okay.

11 Q. What is the default that's referenced here?

12 A. Under Section 9C of the loan agreement,
13 "Should Clearwater or any of its affiliates default
14 under any loan, extension of credit, security agreement
15 or any other debt owing to the lender."

16 Q. Okay.

17 A. "Such event shall constitute a default under
18 the loan agreement."

19 Q. All right.

20 A. "Please take notice of such as that default."

21 DEPOSITION EXHIBIT F

22 (Commercial Loan Agreement
23 was marked for identification purposes as
24 Deposition Exhibit F.)

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 stated that it couldn't proceed forward because the
2 debtor in possession didn't have access to those funds.

3 Q. And the reason it didn't have access to those
4 funds is because United Bank would not allow the
5 Clearwater funds to be used to fund the proposed debt;
6 right?

7 A. Again, the default that we had declared had
8 not been cured. If the cure had occurred, they could
9 have used those funds.

10 Q. Okay. And earlier you said the cure was
11 paying off the Clearwater line of credit; correct?

12 A. That would have been one potential cure. If
13 the note's gone, there's no -- there's clearly no
14 default.

15 Q. All right. Did United Bank ask Clearwater to
16 pay off the Clearwater line of credit?

17 A. I don't believe we asked that, no.

18 Q. Okay. So after the hearing did not go forward
19 on the anticipated DIP on July 1, my understanding is
20 there were some meetings between the parties; is that
21 right?

22 A. That is correct.

23 Q. Well, before we get to that, like, everyone
24 left the courtroom, we're not going forward, we may or

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 may not come back. Is that a fair general
2 characterization?

3 A. Yeah, that would be a fair general
4 characterization.

5 Q. Where did the United Bank people go after they
6 left the courtroom?

7 A. We returned to my office.

8 Q. Okay. Was there a meeting following that
9 hearing?

10 A. There was.

11 Q. Okay. Who was at that meeting?

12 A. So it would have been my self, Dave Smith who
13 was at the hearing. Joe Bunn as counsel. I can't
14 recall if Dave Mills was in that meeting. I don't
15 believe he was. D.F. Mock would have been in that
16 meeting and there may have been participants via phone,
17 but I can't recall.

18 Q. Okay. All right. I will again say I don't
19 want to intrude into attorney client privilege and ask
20 you what was discussed with the bank's counsel, but was
21 there anything discussed in that meeting that was not
22 essentially a privileged discussion with counsel?

23 A. No. I mean, we were very surprised.

24 Q. Why were you surprised?

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 A. We were surprised that no resolution had been
2 able to -- we had not been able to reach a resolution.
3 We had, prior to the hearing, we had made an offer to
4 release exclusive control for a waiver of claims and
5 that was rejected and we were very surprised by that.

6 Q. When was that offer made?

7 A. That offer was made prior to the hearing in
8 the foyer or the rotunda area of the courtroom.

9 Q. Okay. And who communicated that offer?

10 A. Joe Bunn.

11 Q. And to whom was the offer communicated?

12 A. It was communicated to Jeff Hoops, Eddie
13 Cunningham and myself and Dave Smith were standing by.

14 Q. So it was Joe Bunn who communicated that to
15 Hoops, Cunningham and then you and Mr. Smith observed
16 it?

17 A. That's correct.

18 Q. No lawyer for Blackjewel was present?

19 A. Not -- if you don't mind, can I sort of
20 describe it?

21 Q. Sure.

22 A. So there was a huddle here. Mr. Lerner was in
23 the doorway and it was communicated to him that he
24 didn't agree, not Mr. Lerner, but that Mr. Hoops had

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 not agreed to that.

2 Q. Okay and the specific offer was that United
3 Bank would release the notice of exclusive control if
4 who would give up claims?

5 A. If -- and this is where I'm going to refer to
6 it as what our intent was was Jeff Hoops, Blackjewel,
7 Clearwater, et. al., the Hoops entities.

8 Q. Okay. And what claims would they have been
9 releasing related to the payroll issues and fuel
10 supplier issues?

11 A. If you remember, as I mentioned earlier, one
12 of the first things that Mr. Hoops indicated was that
13 he planned to sue United Bank, so that had been
14 swirling around since that initial conversation.

15 Q. Okay. Why would United Bank have released
16 exclusive control of the funds in exchange for a
17 release of claims given what you described as its
18 substantive concerns?

19 A. We had been working, like I said, all morning
20 to try and come up with a resolution and there had been
21 various iterations of proposals that were all met with
22 rejection and at that point we didn't see a path that
23 was going to be productive and we made the business
24 decision that it was better to move forward with that

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 proposal and release the notice of exclusive control
2 for that waiver.

3 Q. Okay. In the various proposals that were met
4 with rejection, when were those communicated?

5 A. That 8:30 call, I remember that was a focus of
6 that.

7 Q. Okay. And tell me what specific proposal was
8 communicated during the 8:30 call?

9 A. So the initial proposal was that Clearwater
10 agreed to use some of the proceeds from the DIP loan to
11 pay down the Blackjewel line of credit. And the focus
12 of that was, again, our concern in the DIP and the
13 first day motions was the use of cash collateral that
14 should have been used to pay down the Blackjewel note.
15 That was rejected.

16 Then we made a proposal that Clearwater guarantee
17 up to 3 million dollars of the Blackjewel note. The
18 logic behind that or the basis behind that was, again,
19 the same concerns, but there was no immediate cash
20 outlay and if everything proceeded as was being
21 presented to us, there would be no material impact.

22 Q. Okay. Other than those two proposals, was
23 anything else specifically proposed?

24 A. No. Those were the three over the course of

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 the day.

2 Q. Okay. All right, so back to the post hearing
3 meeting between you and Mr. Bunn and the other United
4 Bank representatives. I've told you I'm not going to
5 ask about privileged communications.

6 Did any United Bank business person communicate
7 with another United Bank business person as a result of
8 that meeting outside the presence of counsel?

9 A. Candidly, I'm sure. I don't know. There were
10 phone calls going every which way, so I'm sure that
11 probably did occur.

12 Q. Okay. Got it. But you don't recall anything
13 specific?

14 A. No, sir.

15 Q. Okay. To the best of your recollection you
16 can't think of someone asked for a particular document
17 or piece of information, you don't remember anything
18 like that?

19 A. No, sir.

20 Q. Okay. All right. So that meeting happens
21 after the hearing which we established was sometime
22 2:30-ish, 3:00-ish that we're not holding each other,
23 but somewhere in that rough time period. How long did
24 your meeting at United Bank take?

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 A. I don't think it went beyond an hour.

2 Q. Okay.

3 A. We, like I said, we were just -- honestly it
4 was more sort of where do we go from here and those
5 kind of things and then I believe Mr. Bunn received a
6 phone call from Mr. Lerner inviting us over to Bailey &
7 Glasser.

8 Q. Okay and there was an in person meeting at
9 Bailey Glasser?

10 A. There was, yes.

11 Q. Who attended that meeting?

12 A. From United Bank it was myself, Dave Smith,
13 D.F. Mock and counsel Joe Bunn.

14 Q. Okay. Of and that's every one you remember on
15 the United Bank side?

16 A. That's correct.

17 Q. Okay. How about, well, who else was there
18 other than United Bank people?

19 A. I remember a gentlemen from Lime Rock that I
20 can't remember his name.

21 Q. Okay.

22 A. Mr. Hoops was there. Drew Kesler was there.
23 Dave Beckman was there. Dan Broschious was there. I
24 may be mispronouncing his name.

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 Q. No, that's correct.

2 A. Then I don't remember any other business
3 people. I remember there were quite a few attorneys
4 from your firm, but I can't remember their names.

5 Q. Certainly Mr. Lerner was there?

6 A. Mr. Lerner was there.

7 Q. Okay. Maybe Travis McRoberts?

8 A. He would have been there, yes, sir.

9 Q. Okay. I don't know anyone else, but let's say
10 plus other potential Squire people?

11 A. And candidly, at that point we were having --
12 we didn't know all the players. There were analysts
13 for FTI and Associates, so there may have been another
14 business person there that I didn't recognize.

15 Q. Got it. Fair enough. But the ones you've
16 named are the ones you recall specifically?

17 A. Yes.

18 Q. Okay. No one from Riverstone was there;
19 correct?

20 A. No, Riverstone was not there.

21 Q. Okay. And was Bailey Glasser Riverstone's
22 counsel?

23 A. They were.

24 Q. It was at Bailey Glasser, but no one from

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 Bailey Glasser participated he in the meeting; right?

2 A. That's correct.

3 Q. Okay, so what transpired at that meeting?

4 A. A lot. Mr. Lerner was very animated and
5 basically said you all don't understand what you're
6 doing. Your counsel doesn't understand what he's doing
7 and all of this. There was, you know, they told us
8 that mines were on fire, that they had sent employees
9 home and all of this had occurred since the hearing.

10 They, again, asked us to consider releasing our
11 hold or our notice of exclusive control and asked us to
12 go to a separate conference room at that point.

13 Q. Okay. And did that happen, did United Bank go
14 to a separate --

15 A. We did, yes.

16 Q. Okay and Mr. Bunn was there. Was that
17 essentially just a privileged discussion with counsel
18 in the separate room?

19 A. It was. I mean, it was again just sort of
20 what are we going to do and what can we do.

21 Q. Okay. Did United Bank have a reaction when
22 the debtor said they sent employees home?

23 A. We were surprised. I mean, I don't think that
24 we verbally reacted. It was very much we listened.

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 Q. Okay. Did United Bank make proposals at that
2 meeting, I'm going to call it, the they weren't there,
3 but the Bailey Glasser meeting for lack of a better
4 term?

5 A. Following our break out, we then came back to
6 Mr. Hoops and Mr. Lerner, I mean, everybody at that
7 point. We said okay, we will release our right to
8 exclusive control.

9 Q. In exchange for what?

10 A. For nothing.

11 Q. Just nothing?

12 A. Yeah.

13 Q. No terms whatsoever?

14 A. No.

15 Q. Okay. There was not a request to make
16 payments on --

17 A. Nothing.

18 Q. Okay. It wasn't conditioned on a release of
19 claims?

20 A. No. We removed that.

21 Q. Okay. Why was it an offer then?

22 A. I guess it wasn't an offer.

23 Q. Why didn't United Bank just release it then?

24 A. We subsequently did.

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 Q. Okay. What was the purpose of the meeting at
2 that point if United Bank was willing to release the
3 exclusive control for nothing?

4 A. Well, we met to come to that conclusion.

5 Q. Okay. So United Bank's position is at that
6 meeting there was never any request to make payment on
7 either Blackjewel loans or Clearwater loans as a
8 condition to release of exclusive control?

9 A. Some of the previous offers that I ran through
10 earlier may have been restated to see why can't can we
11 do this, why can't we do this, but the ultimate
12 resolution was that we agreed to release control.

13 Q. Okay.

14 A. So you see what I'm saying? There wasn't
15 anything new.

16 Q. Okay.

17 A. That I can recall.

18 Q. But the prior United Bank requests were
19 reiterated before United Bank eventually concluded it
20 would just release control?

21 A. Probably. As I'm sure is -- we were looking
22 to -- we were receiving no feedback as to why those
23 proposals were not viable and so we, I'm sure, asked
24 again, hey, can we do this, can we do that and, again,

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 were met with no. So the ultimate resolution was we'll
2 release the notice of exclusive control.

3 Q. Okay. Well, how long were those prior
4 proposals reiterated before United Bank eventually
5 communicated that it was just going to release control?

6 A. I would say maybe an hour, hour and a half. I
7 mean, I vividly remember -- this is July, so I guess,
8 but we walked out of there and it was very much
9 sunlight and people from FDL and Squire were talking
10 about dinner plans so it wasn't late.

11 Just going on if we say 2:30 is the hearing, 3:30
12 we're back to everybody's offices, 4:30, 5:00 o'clock
13 and, again, this is general times, we go to Bailey &
14 Glasser. I'd say 7:00.

15 Q. Okay. When did United Bank rescind the
16 exclusive control?

17 A. I believe a letter was sent somewhere around
18 8:30 or 9:00.

19 Q. Okay. After you left Bailey & Glasser, were
20 there any further communications between United Bank
21 and either Clearwater or the debtors regarding loan
22 default, collateral issues to your recollection?

23 A. To my recollection it was all about getting
24 the notice of exclusive control rescission letter out.

BLACKJEWELL, LLC, et al. v.
UNITED BANK

MATTHEW BOND
September 23, 2021

1 Q. Okay. Did you have an understanding or belief
2 of what events on June 29, 2019 referred to?

3 A. I believe it refers to the payroll issue.

4 Q. Okay.

5 A. And the phone call and all of that.

6 Q. All right.

7 A. June 29th is Friday, correct?

8 Q. June 28th was Friday, June 29 was Saturday.

9 A. Okay. I don't know what the events on -- June
10 29th was nothing but cutting checks.

11 Q. Okay. All right.

12 A. I don't know if that was a misprint, but as
13 far as -- as far as the bank is concerned, June 29th
14 was -- we were in an operations center from 8:00
15 o'clock until about 4:00 o'clock or maybe 3:30.

16 Q. Okay. All right. And as I understood your
17 testimony, it was that the payroll ACHs did not go out
18 initially because of the issue you described with
19 respect to payroll accounts and overdrawn status and
20 then as well the employee who got an e-mail or maybe
21 didn't get an e-mail was out of the office on Friday
22 the 28th; correct?

23 A. I'll call it human error or human
24 miscommunication.